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August 16, 2002

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Re: CC Docket No. 00-218

Dear Ms. Salas:

Enclosed for filing in the above captioned docket, please find an original and four copies of the Application For Review of WorldCom Inc. Also enclosed are eight copies for the arbitrator. An extra copy is enclosed to be file-stamped and returned.

If you have any questions, please do not hesitate to call me at 202-639-6058. Thank you very much for your assistance with this matter.

Very truly yours,

Jodie L. Kelley

Encl.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Expedited Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration	)	CC Docket No. 00-218
In the Matter of Petition of Cox Virginia Telecom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Arbitration	)	CC Docket No. 00-249
In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc.	)	CC Docket No. 00-251

APPLICATION FOR REVIEW

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Dated: August 16, 2002

I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, WorldCom, Inc. ("WorldCom") respectfully submits this Application for Review of the Commission's Arbitration Order.[1] This Order resolved all non-pricing issues raised in the arbitration between WorldCom and Verizon-Virginia, Inc. ("Verizon"), in a proceeding conducted by the Commission pursuant to section 252(e)(5) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "Act" or the "1996 Act").[2]

WorldCom and the other carriers initially sought to resolve their disputes with Verizon before the Virginia State Corporation Commission (the "VSCC") pursuant to Section 252(b)(4) of the 1996 Act. The VSCC declined to arbitrate the terms and conditions of the agreement, however, and the Commission subsequently granted the requesting carriers' petition to preempt the VSCC pursuant to Section 252(e)(5) of the Act. *See Petition of WorldCom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.*, 16 F.C.C.R. 6224, ¶ 12 (2001); *see also Arbitration Order* ¶ 6 (explaining procedural history of case). At the same time it issued its preemption order, the Commission issued a procedural order in which, among other things, it delegated to the Chief of the Wireline Competition Bureau the authority to serve as the Arbitrator. *See Procedures for Arbitrations*

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[1] *In Re Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration,* CC Docket Nos. 00218, 00-249, 00-251, DA 02-1731 (rel. July 17, 2002) ("*Arbitration Order*").

[2] The arbitration also resolved non-pricing issues raised by AT&T Communications of Virginia, Inc. and Cox Virginia Telcom, Inc.

Conducted Pursuant to Section 252(e)(5) of the Communications Act of 1932, as amended, 11 F.C.C.R. 6231, ¶¶ 8-10 (2001); *see also Arbitration Order* ¶ 6.[3]

Although the Commission stepped into the shoes of the VSCC in the arbitration, it made clear that in deciding the issues presented to it, it would only apply federal law and would not purport to explore the limits of terms and conditions that could otherwise be imposed by the VSCC pursuant to any authority granted it. Moreover, as the *Arbitration Order* itself makes clear, the Arbitrator applied only "current Commission rules and precedents," and did not attempt to anticipate the results of ongoing rulemaking proceedings or resolve broader policy disputes. *Arbitration Order* ¶ 3. Thus, the Arbitrator ordered only that which current Commission rules require.

In this Application, WorldCom seeks review of two of the Arbitrator's determinations. First, WorldCom asks the Commission to clarify that the Arbitrator's conclusion that the Commission's current rules do not mandate "batch" access to the CNAM database does not invalidate decisions in which state commissions have provided such access pursuant to their independent authority. Second, WorldCom requests that the Commission hold that, despite the Arbitrator's rejection of a contract provision that would have required Verizon to provide resold DSL in conjunction with the unbundled network element platform ("UNE-P), Verizon is not free to refuse to provide other resold services (such as operator services and directory assistance) that WorldCom currently uses in conjunction with UNE-P to provide services to its customers.

[3] For ease of reference, throughout this Application, WorldCom will refer to rulings made in the arbitration pursuant to this delegated authority as actions of "the Arbitrator."

II. THE COMMISSION SHOULD CLARIFY THAT ALTHOUGH ITS RULES DO NOT CURRENTLY MANDATE "BATCH" ACCESS TO THE CALLING NAME DATABASE, NOTHING IN THE ACT PRECLUDES A STATE COMMISSION FROM ORDERING SUCH ACCESS.

In the *Arbitration Order*, the Arbitrator concluded that the Commission's rules did not mandate that Verizon provide the particular type of access to its calling name ("CNAM") database sought by WorldCom. *See Arbitration Order* ¶¶ 524-527. WorldCom does not dispute that particular conclusion. In deciding the issue, however, the Arbitrator used language that could be construed as indicating that either the Act or the Commission's rules *forbid* the type of access sought by WorldCom. As explained below, that interpretation of the Commission's rules would change the state of the law, requiring several state commissions to reverse previous decisions and, indeed, halting the ongoing exchange of such information between WorldCom and another incumbent local exchange carrier ("LEC"). Because it seems clear that the Arbitrator did not intend such a dramatic shift in existing law, WorldCom respectfully requests that the Commission clarify that the *Arbitration Order* addresses only the question whether the Commission's current rules *mandate* the type of access to the CNAM database sought by WorldCom.

In its Petition for Arbitration, WorldCom sought "full," "batch" access to Verizon's calling name ("CNAM") database in a bulk downloadable format. *See Arbitration Order* ¶¶ 522-523. During the course of the arbitration, Verizon did not dispute that Section 319(e)(2)(i) requires it to provide nondiscriminatory access to the CNAM call-related database. Instead, Verizon asserted only that "'per query' access is sufficient to meet its obligations under the Act and the Commission's rules." *Arbitration Order* ¶ 520.

After reviewing the Commission's current rules, the Arbitrator declined to mandate batch access, concluding that those rules do not require that Verizon provide a downloadable "copy" of its database to WorldCom. In particular, citing Section 51.319(e)(2)(i), the Arbitrator held that Verizon's proposal does provide "physical access at the signaling transfer point linked to the unbundled database." *Id.* ¶ 524. The Arbitrator also concluded that Section 51.319(e) does not require the access WorldCom sought, *id.* ¶ 525, that WorldCom's argument is inconsistent with the Commission's existing rules, *id.* ¶ 526, and that the 1996 Act itself "does not mandate that an incumbent provide copies of its CNAM database to requesting carriers." *Id.* ¶ 527. WorldCom does not seek review of the determination that the Commission's current rules do not *affirmatively require* the access WorldCom requested.

In resolving the issue, however, the *Arbitration Order* at times uses language that could be construed to indicate that the 1996 Act or the Commission's rules *prohibit* a state commission from requiring such access. *See, e.g., id.* ¶ 524 ("the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon"); *id.* ¶ 525 (noting that in the *Local Competition Order*,[4] "the Commission did not intend . . . to enable competitive LECs to download or otherwise copy an incumbent's CNAM database"); *id.* ¶ 526 ("Since WorldCom is seeking access to Verizon's CNAM database beyond that provided for in rule 51.319(e)(2)(i), we find its argument inconsistent with the Commission's rules."). It is implausible that, in an Order that expressly disclaimed any intent to break new policy ground, the Arbitrator in fact purported to forbid states from ordering a particular form of access to the CNAM database. Accordingly, WorldCom believes the Arbitrator did not intend to suggest that the Act or the Commission's rules prohibit

[4] *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996).

state commissions from ordering bulk access to the CNAM database. Nonetheless, WorldCom is concerned that the language used in this section of the *Arbitration Order* might be interpreted to so hold.

Such a reading of the *Arbitration Order* would be particularly troubling because it would, in effect, reverse existing state commission decisions ordering incumbent LECs to provide batch access. *See, e.g.*, Opening Br. of WorldCom, Inc. ("WorldCom Opening Br.") at 147 (filed Nov. 16, 2001) (citing *In re Application of Ameritech Michigan for Approval of Cost Studies and Resolution of Disputed Issues Related to Certain UNE Offerings*, No. U-12540, 2001 Mich. PSC LEXIS 33, at *32-*33 (Mar. 7, 2001); *Petition of MCImetro Access Transmission Servs., LLC and MCIm Communications, Inc. for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, No. 11901-U, at 9 (Ga. Consumers' Util. Counsel, Feb. 2001)); *see also In re Investigation into Qwest's Compliance With Section 271(c)(2)(b) of the Telecommunications Act of 1996, Checklist Items 3, 7, 8, 9, 10, and 12*, OAH Docket No. 12-500-14485-2, PUC Dkt. No. P-421/C1-01-1370, ¶¶ 149-154 (Minn. Pub. Utils. Comm'n May 8, 2002); *In re Petition of MCImetro Access Transmission Servs., LLC and Brooks Fiber Communications of Tennessee, Inc. For Arbitration of Certain Terms and Conditions of Proposed Agreement With BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, No. 00-00309, 2002 Tenn. PUC LEXIS 112, at *25-*27 (Apr. 3, 2002) (noting that requiring BellSouth to provide batch access to CNAM "places BellSouth and WorldCom in parity" and concluding that BellSouth should provide electronic downloads of the CNAM database if WorldCom compensates it for the downloads). *Cf. In re: Petition of MCImetro Access Transmission Servs., LLC for Arbitration of Certain*

Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996, No. P-474, SUB 10, 2001 N.C. PUC LEXIS 821 (Aug. 2, 2001) (declining to require BellSouth to provide CNAM via download but instructing BellSouth and MCImetro to attempt to negotiate a price for electronic download of that database). As a practical matter, interpreting the *Arbitration Order* as affirmatively prohibiting states from ordering such access would require Ameritech to halt the download of the CNAM database which it has begun providing WorldCom. There is absolutely no reason to suspect that the Arbitrator intended to effect such a dramatic change in the law and negatively impact ongoing state-ordered activity. WorldCom therefore requests that the Commission make clear that the *Arbitration Order* does not do so.

Providing the clarification that WorldCom seeks would be consistent with both the Act and this Commission's previous orders. The Act expressly preserves state commissions' state law authority to supplement the requirements of federal law with additional procompetitive obligations. *See, e.g.*, 47 U.S.C. § 252(e)(3) (stating that "nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an [interconnection] agreement"); *id.* § 251(d)(3) (preserving state unbundled access and interconnection regulations not inconsistent with 1996 Act); *id.* § 261(c) (permitting state commissions to impose additional requirements necessary to further competition consistent with the Act and FCC regulations); *id.* § 152 note (Pub. L. No. 104-104, § 601(c)) (stating that the Act is not to be construed to supersede state or local law unless expressly so provided). Accordingly, this Commission has repeatedly recognized that the 1996 Act and its implementing regulations establish "minimum requirements," and that states "may impose additional pro-competitive requirements that are consistent with the Act and [FCC] rules." *Local Competition Order* ¶ 66;

see also id. ¶ 54 (acknowledging that states may "impose additional requirements that are consistent with the 1996 Act and the FCC's implementing rules"); *id.* ¶ 58 ("We agree generally that many of the rules we adopt should establish non-exhaustive requirements, and that states may impose additional pro-competitive requirements that are consistent with the purposes and terms of the 1996 Act, including our regulations established pursuant to section 251."). These statements make plain that, absent a contrary directive from the FCC or Congress, state commissions may order incumbent carriers to provide greater access to UNEs, such as the CNAM database, than the minimal standards of the Act and regulations require. Indeed, at least one state commission has expressly referenced this independent authority when determining that new entrants should receive batch access to the CNAM database. *See In re Application of Ameritech Michigan for Approval of Cost Studies and Resolution of Disputed Issues Related to Certain UNE Offerings*, No. U-12540, 2001 Mich. PSC LEXIS 275, at *5-*6 (July 25, 2001). For these reasons, the Commission should clarify that such state commission decisions remain valid.

II. THE COMMISSION SHOULD MAKE CLEAR THAT UNRESOLVED ISSUES CONCERNING THE PRECISE EXTENT OF AN INCUMBENT LEC'S XDSL RESALE OBLIGATIONS IN CONJUNCTION WITH A COMPETITIVE LEC'S USE OF UNE-P DO NOT AFFECT VERIZON'S GENERAL DUTY TO RESELL SERVICES SUCH AS OS/DA PURSUANT TO SECTION 251(b)(4) IN CONJUNCTION WITH ITS DUTY TO PROVIDE UNBUNDLED NETWORK ELEMENTS PURSUANT TO SECTION 251 (b)(3).

In its arbitration petition, WorldCom also sought inclusion of contractual language that would obligate Verizon to provide both unbundled network elements and resold services which WorldCom could, in turn, use together to provide service to its own customers. The Arbitrator rejected WorldCom's proposal, citing unresolved issues concerning "the incumbent LEC's xDSL resale obligations when the competitive carrier provides voice service using the UNE loop or

UNE-platform." *Arbitration Order* ¶ 635. The Arbitrator went further, however, concluding more generally that "WorldCom has failed to explain, other than in the resold xDSL context, how it requires or even intends to implement" its proposed language, and thus declining "to direct Verizon to comply with the novel requirement of combining its resold services with UNEs on behalf of WorldCom." *Id.* ¶ 637. WorldCom does not seek review of the determination that a requirement that xDSL be resold will not be imposed until issues related to resale of xDSL in conjunction with a competitive LEC's use of UNE loop or UNE-P are resolved. WorldCom does, however, ask the Commission to clarify that this decision does not extend to the resale of other services – such as operator services and directory assistance ("OS/DA") – that can be, and currently are, provided in conjunction with UNE-P.

As WorldCom's witness explained in pre-filed testimony submitted in this proceeding, WorldCom's proposed language had been negotiated and agreed to by Verizon and WorldCom, and was included in the contract in effect when the arbitration petition was filed. *See* Direct Testimony of Mark Argenbright on Behalf of WorldCom, Inc., at 36-37 (Issue IV-84) (filed Aug. 17, 2001) (Exh. 8). In this arbitration, WorldCom proposed that the intent behind its proposal be clarified by inserting the example of "UNE-P in conjunction with resold Operator Services/Director Assistance Services" into the existing contract language. *Id.* at 37 (internal quotation omitted). Similarly, in Mr. Argenbright's rebuttal testimony, WorldCom again explained that WorldCom sought the ability to offer "customers resold OS/DA . . . in conjunction with UNEs. The current interconnection agreement allows WorldCom to obtain and offer services through these mixed arrangements, and it is important that Verizon be required to continue providing such arrangements." Rebuttal Testimony of Mark Argenbright on Behalf of WorldCom, Inc., at 25 (Issue IV-84) (Exh. 24).

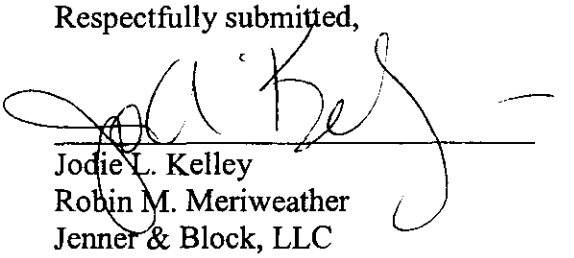
Thus, the Commission's conclusion that "WorldCom has failed to explain, other than in the resold xDSL context, how it requires or even intends to implement this proposal," *Arbitration Order* ¶ 636, is factually incorrect.[5] As demonstrated above, WorldCom did explain that it intended to resell OS/DA in conjunction with local service offered via UNE-P. And although WorldCom focused primarily on the DSL issue in its briefs, that is because it understood the more fundamental proposition to be undisputed. As WorldCom explained, the Act provides for three forms of entry – resale, use of unbundled network elements, and self-provisioning – and does not restrict entry by a competitive carrier to a single mechanism. *See* WorldCom Opening Br. at 187. Thus, absent technical or other constraints such as those the Commission has concluded exist with respect to resale of DSL over UNE-P, there is no basis whatsoever to prohibit WorldCom from reselling a service such as OS/DA (which is an ILEC service separate from local exchange service) in conjunction with WorldCom's offering of its own local exchange service over UNE-P.

Indeed, although Verizon disputed its obligation to provide advanced services for resale if it was not the underlying voice provider, it *nowhere* asserted that it could refuse to resell OS/DA services to WorldCom pursuant to Section 251(b)(4) simply because WorldCom intends to provide local exchange service to the underlying customer using UNE loops or the UNE platform pursuant to section 251(b)(3). It is perhaps unsurprising that Verizon did not take this extreme position; the logical consequence would be that if WorldCom wanted to provide OS/DA services to a customer by reselling that service, WorldCom would be prohibited from offering local exchange service to that customer through the use of UNEs – a restriction that would be

[5] Although WorldCom also included a discussion of reselling xDSL services with UNE-P in both its testimony and in its brief, the above-cited testimony makes clear that Mr. Argenbright also explained that this issue was not limited to DSL, but instead extended to the resale of other services such as OS/DA.

utterly inconsistent with the Act.[6] Alternatively, Verizon could sell OS/DA to WorldCom at non-wholesale rates. That, however, would merely drive up the cost and make it impossible for WorldCom to offer local exchange service in conjunction with OS/DA to customers at the most competitive rates which the Act authorizes. That, too, is anathema to the Act's goals. For these reasons, the Commission should hold that the *Arbitration Order* does not prohibit WorldCom from purchasing services such as OS/DA for resale pursuant to Section 251(b)(4) where WorldCom uses UNE-P to provide local exchange service pursuant to Section 251(b)(3).

Respectfully submitted,



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[6] Nothing in the Act suggests that a new entrant is restricted to using only one entry method to serve a customer. Indeed, the Act's basic purpose of fostering widespread competition is furthered by a ruling that makes clear that a new entrant may use any or all of these entry vehicles in conjunction to serve a customer.

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the foregoing letter were delivered this 16th day of August, 2002, by Federal Express and first class mail, postage prepaid, to:

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